

**BEFORE THE WATER RESOURCES DEPARTMENT
OF THE
STATE OF OREGON**

In the Matter of Transfer Application)
T-10425, Klamath County)
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Authority

ORS 540.505 to 540.580 establishes the process in which a water right holder may submit a request to transfer the point of diversion, place of use, or character of use authorized under an existing water right. OAR Chapter 690, Division 380 implements the statutes and provides the Department’s procedures and criteria for evaluating transfer applications.

Applicants

Dale and Lavonne Marsland
8850 Philpott LN
Bonanza, OR 97623

Applicants

Brian and Marlene Farber
P.O. Box 142
Bonanza, OR 97623

Receiving Landowners

Dan Cohan and Mary Hunnicutt
P.O. Box 391
Arivaca, AZ 85601-0391

Findings of Fact

Background

1. On June 29, 2007, Donald and Debra Randel filed an application to change the character of use under Certificates 34773 and 34774. The Department assigned the application number T-10425.
2. On September 21, 2007, a portion of T-10425 was assigned to Brian and Marlene Farber.
3. On October 23, 2007, another portion of T-10425 was assigned to Dale and LaVonne Marsland.
4. On March 5, 2010, Donald and Debra Randel modified the transfer application to list Dan Cohan and Mary Hunnicutt as receiving landowners, since the Randels had sold the remaining portion of the land included in T-10425 to them.
5. On June 14, June 16 and June 30, 2011, the applicants modified the proposed changes in the application to include Certificates 34770, 83670, 34773 and 34774.

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, you may petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

6. The first right to be transferred is as follows:

Certificate: 34770 in the name of Ronald T. Williams (perfected under Permit R-2286)

Use: STORAGE of WATER to be appropriated under APPLICATION S-33301, PERMIT S-26405 for STOCK and IRRIGATION

Priority Date: AUGUST 19, 1959

Duty: 19.8 ACRE FEET; being 2.3 ACRE FEET for IRRIGATION and 7.0 ACRE FEET for STOCK in RESERVOIR #1, and 10.5 ACRE FEET for STOCK in RESERVOIR #3

Source: Unnamed intermittent flow channel, tributary to LOST RIVER in FRANK WORDEN RESERVOIRS #1 and #3.

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Reservoir #	Owner
39 S	11 E	WM	29	SW SE	#1	Cohan/ Hunnicutt
39 S	11 E	WM	33	NW NE	#3	Farber

7. Certificate 34770 defines the source for Reservoir #1 as an unnamed intermittent flow channel, tributary of Lost River, in Frank Worden Reservoirs #1 and #3. According to USGS topographical maps described in Attachment "A", there are a few intermittent drainages that contribute filling of Reservoirs #1 and #3. Reservoir #3 is not connected to Reservoir #1 and the source that fills Reservoir #3 is separate from the source that fills Reservoir #1. There is also a reservoir (#2) between #1 and #3 which is approximately 1/2 mile above Reservoir #1. When Reservoir #2 overflows, water spills into two additional intermittent flow channels as well. The description of the source for Certificate 34770 should be clarified to the following: "The right to store waters in Reservoir #1 from unnamed intermittent flow channels and the overflow waters from Reservoir #2 under Application R-34491, tributaries of Lost River, and the right to store water in Reservoir #3 from Wright Creek, tributary of the Lost River."

8. Application T-10425 proposes to change the character of use of this right to STORAGE FOR MULTIPLE PURPOSES.

9. The portion of the second right to be transferred is as follows

Certificate: 83670 in the name of RONALD T. WILLIAMS (perfected under Permit S-26405)

Use: IRRIGATION of 27.0 ACRES and STOCK USE

Priority Date: AUGUST 19, 1959

Source: Two reservoirs (perfected under Permit R-2286) tributaries of the LOST RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	11 E	WM	29	SW SE	RESERVOIR #1: 1180 FEET NORTH AND 1650 FEET WEST FROM THE NW CORNER OF SECTION 33
39 S	11 E	WM	33	NW NE	RESERVOIR #3: 700 FEET SOUTH AND 3920 FEET EAST FROM THE NW CORNER OF SECTION 33

Authorized Place of Use:

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot	Landowner	Reservoir #
39 S	11 E	WM	29	SW SE	22.1	200	Cohan/Hunnicut	#1
39 S	11 E	WM	32	NW NE	4.9	8800	Cohan/Hunnicut	#1

LIVESTOCK							
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Landowner	Reservoir #
39 S	11 E	WM	29	SW SE	200	Cohan/Hunnicut	#1
39 S	11 E	WM	33	NW NE	9200	Farber	#3

10. Certificate 83670 describes the right to use water from an unnamed stream and two reservoirs (#1 and #3) for irrigation and stock use. The final proof survey notes clearly specify that the irrigation use applies to Reservoir #1 only. Reservoir #3 is not connected to any delivery system and therefore is impossible to be used for irrigation at the place of use described in the right. There are several intermittent drainages that contribute to the unnamed stream described in the right. There is also a reservoir (#2) approximately 1/2 mile above Reservoir #1. When Reservoir #2 reaches the maximum capacity, the overflow water spills into the intermittent flow channel as well. The USGS topographical map shows this in greater detail. The USGS topographical map also names the source that feeds Reservoir #3 as Wright Creek. This stream is the only source that is used to store water in Reservoir #3. The description of the source for Certificate 83670 should be clarified to the following: "The waters from unnamed intermittent flow channels and Reservoir #1 for Irrigation of 27.0 acres and Stock use, and the right to use the waters of Wright Creek and Reservoir #3 for Stock Use."

11. Application T-10425 proposes to change the character of use to the following:

RESERVOIR #1: 25% or (2.3 acre feet) for Agriculture Water Use, Riparian Enhancement, and 75% or (7.0 acre feet) for Supplemental Irrigation, Stock, Recreation and Wildlife Use								
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot	Landowner	
39 S	11 E	WM	29	SW SE	22.1	200	Cohan/Hunnicut	
39 S	11 E	WM	32	NW NE	4.9	8800	Cohan/Hunnicut	

RESERVOIR #3: 10% or (1.05 acre feet) for Domestic Use Expanded for one household, Agricultural Water Use, and 90% or (9.45 acre feet) for Stock, Recreation and Wildlife Use								
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Landowner		
39 S	11 E	WM	33	NW NE	9200	Farber		

12. The third right to be transferred is as follows:

Certificate: 34773 in the name of R. T. Williams (perfected under Permit R-2579)
Use: STORAGE of WATER to be appropriated under APPLICATION S-34492, PERMIT S-27136 for STOCK and IRRIGATION
Priority Date: DECEMBER 2, 1960
Duty: 70.0 ACRE FEET; being 3.0 ACRE FEET for STOCK and 67.0 ACRE FEET for IRRIGATION
Source: Unnamed tributary of the LOST RIVER in WORDEN RESERVOIR #2.

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Ownership
39 S	11 E	WM	33	NE NW	Farber
39 S	11 E	WM	33	NW NW	Marsland
39 S	11 E	WM	33	SW NW	Marsland
39 S	11 E	WM	33	SE NW	Farber

13. Certificate 34773 describes the source as an unnamed tributary of the Lost River in Worden Reservoir #2. According to the USGS topographical maps (Attachment B), there are several intermittent drainages that contribute to the storage of the Reservoir #2. One of the sources is unnamed but contributes to the storage of both Reservoirs #1 & #2. The source forks on the south section line of Section 33 and flows into Reservoirs #1 and #2. Wright Creek also contributes to the storage of Reservoir #2 and is labeled as such on the topographical map. The description of the source for Certificate 34773 should be clarified to the following: "waters of unnamed intermittent flow channels and Wright Creek, tributaries of the Lost River."

14. Transfer Application T-10425 proposes to change the character of use of this right to STORAGE FOR MULTIPLE PURPOSES.

15. The portion of the fourth right to be transferred is as follows:

Certificate: 34774 in the name of R.T. Williams (perfected under Permit S-27136)
Use: SUPPLEMENTAL IRRIGATION of 27.0 ACRES and LIVESTOCK USE
Priority Date: DECEMBER 2, 1960
Duty: 70.0 ACRE FEET; being 3.0 ACRE FEET for STOCK and 67.0 ACRE FEET for SUPPLEMENTAL IRRIGATION
Source: WORDEN RESERVOIR #2 constructed under APPLICATION R-34491, PERMIT R-2579, tributary to the LOST RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	11 E	WM	33	SW NW	RESERVOIR #2: 1800 FEET SOUTH AND 1160 FEET EAST FROM THE NW CORNER OF SECTION 33

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	ACRES	Tax Lot	Landowner
39 S	11 E	WM	29	SW SE	22.1	200	Cohan/Hunnicut
39 S	11 E	WM	32	NW NE	4.9	8800	Cohan/Hunnicut

LIVESTOCK						
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Landowner
39 S	11 E	WM	33	NE NW	9200	Farber
39 S	11 E	WM	33	NW NW	9201	Marsland
39 S	11 E	WM	33	SW NW	9201	Marsland
39 S	11 E	WM	33	SE NW	9200	Farber

16. Application T-10425 proposes to change the character of use to the following:

RESERVOIR #2: 10% or (7.0 acre feet) for Domestic Use Expanded for two households, Agricultural Water Use, Riparian Enhancement and 90% or (63.0 acre feet) for Stock, Recreation, Wildlife and Aquatic Live Water Use.

17. Application T-10425 proposes to change the place of use to the following:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Landowner
39 S	11 E	WM	33	NE NW	9200	Farber
39 S	11 E	WM	33	NW NW	9201	Marsland
39 S	11 E	WM	33	SW NW	9201	Marsland
39 S	11 E	WM	33	SE NW	9200	Farber

18. Notice of the application for transfer was published on July 3, 2007, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
19. On June 9, 2011, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10425 to the applicants. The draft Preliminary Determination set forth a deadline of July 9, 2011, for the applicants to respond.
20. On July 9, 2011 the applicants requested to extend the time for the completion of changes to October 1, 2017 and modified the proposed changes in character of use.
21. On August 3, and August 8, and August 11, 2011 a second draft Preliminary Determination reflecting the changes requested was mailed to the applicants. The applicants requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
22. On September 20, 2011, the Department issued a Preliminary Determination proposing to approve Transfer Application T-10425 and mailed a copy to the applicants. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on September 27, 2011, and in the Herald and News newspaper on October 16, 23 and 30, 2011, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

Transfer Review Criteria [OAR 690-380-4010(2)]

23. Water has been used within the last five years according to the terms and conditions of the rights, and there is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
24. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Application T-10425.
25. The proposed changes would not result in enlargement of the rights.
26. The proposed changes would not result in injury to other water rights.

Conclusions of Law

The changes in the character of use and place of use proposed in application T-10425 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The changes in the character of use and place of use proposed in application T-10425 are approved.
2. The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificates 34770, 34773, 34774, 83670, and any related decree.
3. Water right certificates 34770, 34773 and 34774 are cancelled.
4. Water right certificate 83670 is cancelled. A new certificate will be issued describing that of the right not affected by this transfer.
5. The former place of use of the transferred right shall no longer receive water under the right.
6. When required by the Department, the water user shall install, maintain and operate an in-line flow meter, weir, or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
7. When required by the Department, the water user shall install, maintain and operate a headgate to control and regulate the quantity of water diverted. The type and plans of the headgate must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
8. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2017**. A Claim of Beneficial Use prepared by a Certified Water

Right Examiner shall be submitted by the applicant to the Department within one year after the deadline for completion of the changes and full beneficial use of the water.

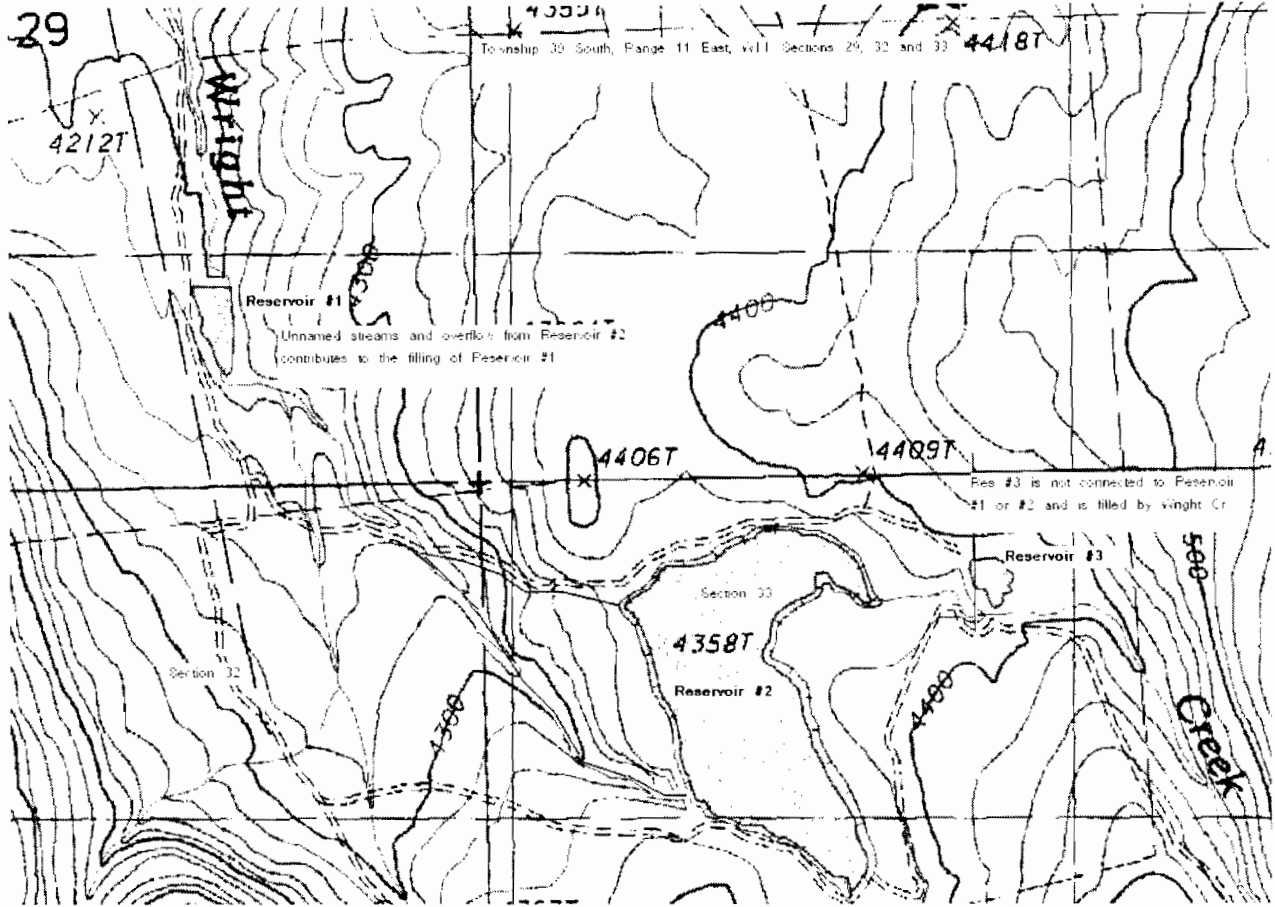
9. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued that clarify the sources for the rights as described in this order.

Dated at Salem, Oregon this 21 day of December, 2011.


Dwight French, Water Right Services Administrator for
PHILLIP C. WARD, DIRECTOR

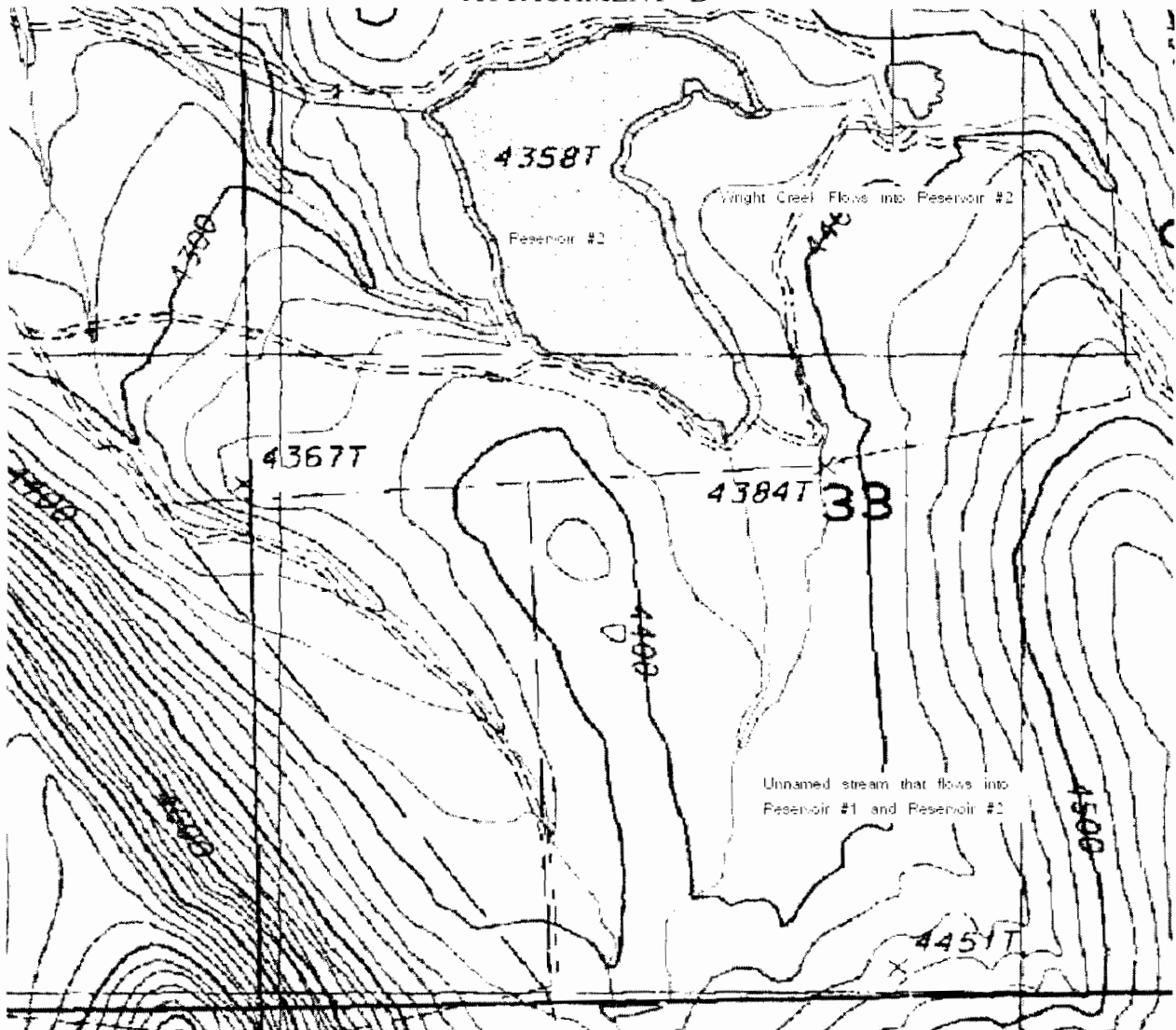
Mailing date: DEC 23 2011

"ATTACHMENT A"



There are a few intermittent drainages that contribute filling of Reservoirs #1 and #3. Reservoir # 3 is not connected to Reservoir #1 and the source that fills Reservoir # 3 is separate from the source that fills Reservoir # 1. There is also a reservoir (#2) between #1 and #3 which is approximately ½ mile above Reservoir #1. When Reservoir # 2 overflows, water spills into two additional intermittent flow channels as well.

ATTACHMENT "B"



There are several intermittent drainages that contribute to the storage of the Reservoir #2. One of the sources is unnamed but contributes to the storage of both Reservoirs #1 & #2. The source forks on the south section line of Section 33 and flows into Reservoirs #1 and #2. Wright Creek also contributes to the storage of Reservoir #2 and is labeled as such.